

Docket No. BRA4.PAU.02



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8/29/02
Pat nt Applicati n

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Raphael C. Wong

Serial No.: 09/810,783

Filed: March 16, 2001

For: COMBINATION DRUG TEST AND
ADULTERANT TEST DEVICE

Examiner: Bao-Thuy L. Nguyen

Group Art Unit: 1641

Irvine, California

August 13, 2002

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RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

In response to the Office Action mailed July 11, 2002, please find enclosed herewith a request for a one-month extension and the appropriate fee. If necessary, please charge any deficit or credit any surplus to Deposit Account No. 01-1960.

Applicant hereby elects Group II, Claims 10-18 and 23-29, with traverse. In particular, Applicant respectfully submits that Group I and Group II do not comprises unrelated inventions.

Of the three types of differing inventions set forth in MPEP § 806.04, it appears that the claims have been differentiated on the first basis, namely, that "two different combinations, not disclosed as capable of use together, having different modes of operation, different functions or different effects are independent." Examples of this

basis include an article of apparel and a locomotive bearing, or a process of painting a house and a process of boring a well. See MPEP § 806.04.

Applicant respectfully submits that the device recited in Claim 1 can hardly be compared to the apparatus recited in Claim 10 as a shoe to a locomotive bearing. Without delving into the nuances of the limitations, Claim 1 is generally directed to a drug testing device that is capable of testing a fluid sample for both adulteration as well as the presence of particular drugs. Similarly, independent Claim 10 is directed to an apparatus that tests for presence of both drugs and adulterants.

It is true that Claim 1 and Claim 10 do not recite identical elements. It would be pointless if they did. The fact that these independent claims recite different elements is not sufficient to make the inventions separate according to MPEP §§ 806.04 and 808.01. In fact, MPEP § 808.01 states that except for species, the situation of independent inventions "is but rarely presented, since persons will seldom file an application containing disclosures of independent things."

The Office Action recites from paragraph 8.20.02 which should only be used when claims are directed to independent, unrelated inventions. The paragraph states, among other things, that inventions are unrelated "if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects." Applicant respectfully submits that such is not the case here especially when both Claims 1 and 10 are directed to a structure that tests for drugs and adulterants. It simply incorrect to characterize these structures as unrelated.


Applicant also notes that method Claims 23-29 were included in both Group I and Group II. In fact, independent Claim 23 is directed to a method of manufacture. Applicant respectfully questions how Claim 1 can be completely unrelated to Claim 10 when the method of manufacture is commonly associated with both? Though not entirely probative of the issue, the fact that the manufacture method claims are associated with both Claim 1 and Claim 10 is further evidence that Claims 1 and 10 are not directed to independent inventions.

Applicant encourages the Examiner to telephone the undersigned attorney if any questions or concerns remain.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231 on

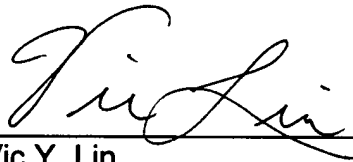
August 13, 2002

by Angela Williams


Signature

August 13, 2002

Respectfully submitted,



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